

1 CENTER FOR DISABILITY ACCESS
2 Ray Ballister, Jr., Esq., SBN 111282
3 Russell Handy, Esq., SBN 195058
4 Phyl Grace, Esq., SBN 171771
5 Dennis Price, Esq., SBN 279082
6 Mail: PO Box 262490
7 San Diego, CA 92196-2490
8 Delivery: 9845 Erma Road, Suite 300
9 San Diego, CA 92131
10 (858) 375-7385; (888) 422-5191 fax
11 phylg@potterhandy.com

12 Attorneys for Plaintiffs

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

Barry Baker, in individual and representative capacity as trustee; **Carol Baker Zimmerman**, in individual and representative capacity as trustee; **Manus Chavakespongse**; and Does 1-10,

Defendants.

Case No.

Complaint For Damages And Injunctive Relief For Violations Of: American's With Disabilities Act; Unruh Civil Rights Act

Plaintiff Chris Langer complains of Defendants Barry Baker, in individual and representative capacity as trustee; Carol Baker Zimmerman, in individual and representative capacity as trustee; Manus Chavakespongse; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a

1 specially equipped van with a ramp that deploys out of the passenger side of
2 his van and he has a Disabled Person Parking Placard issued to him by the State
3 of California.

4 2. Defendant Barry Baker, in individual and representative capacity as
5 trustee, owned the real property located at or about 5556 Santa Monica Blvd.,
6 Los Angeles, California, in March 2017.

7 3. Defendant Barry Baker, in individual and representative capacity as
8 trustee, owns the real property located at or about 5556 Santa Monica Blvd.,
9 Los Angeles, California, currently.

10 4. Defendant Carol Baker Zimmerman, in individual and representative
11 capacity as trustee, owned the real property located at or about 5556 Santa
12 Monica Blvd., Los Angeles, California, in March 2017.

13 5. Defendant Carol Baker Zimmerman, in individual and representative
14 capacity as trustee, owns the real property located at or about 5556 Santa
15 Monica Blvd., Los Angeles, California, currently.

16 6. Defendant Manus Chavakespongse owned the Prime Time Pub located
17 at or about 5556 Santa Monica Blvd., Los Angeles, California, in March 2017.

18 7. Defendant Manus Chavakespongse owns the Prime Time Pub ("Prime
19 Pub") located at or about 5556 Santa Monica Blvd., Los Angeles, California,
20 currently.

21 8. Plaintiff does not know the true names of Defendants, their business
22 capacities, their ownership connection to the property and business, or their
23 relative responsibilities in causing the access violations herein complained of,
24 and alleges a joint venture and common enterprise by all such Defendants.
25 Plaintiff is informed and believes that each of the Defendants herein,
26 including Does 1 through 10, inclusive, is responsible in some capacity for the
27 events herein alleged, or is a necessary party for obtaining appropriate relief.
28 Plaintiff will seek leave to amend when the true names, capacities,

1 connections, and responsibilities of the Defendants and Does 1 through 10,
2 inclusive, are ascertained.

3

4 **JURISDICTION & VENUE:**

5 9. This Court has subject matter jurisdiction over this action pursuant to
6 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
7 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8 10. Pursuant to supplemental jurisdiction, an attendant and related cause
9 of action, arising from the same nucleus of operative facts and arising out of
10 the same transactions, is also brought under California's Unruh Civil Rights
11 Act, which act expressly incorporates the Americans with Disabilities Act.

12 11. Venue is proper in this court pursuant to 28 U.S.C. § 1333(b) and is
13 founded on the fact that the real property which is the subject of this action is
14 located in this district and that Plaintiff's cause of action arose in this district.

15

16 **FACTUAL ALLEGATIONS:**

17 12. The Plaintiff went to the Prime Pub in March 2017 to have a beer.

18 13. The Prime Pub is a facility open to the public, a place of public
19 accommodation, and a business establishment.

20 14. Parking spaces are one of the facilities, privileges and advantages
21 offered by Defendants to patrons of the Prime Pub.

22 15. However, there were no parking spaces marked and reserved for
23 persons with disabilities during plaintiff's visit.

24 16. Currently, there is not a single parking space marked and reserved for
25 persons with disabilities.

26 17. On information and belief, plaintiff alleges that there used to be a
27 parking space marked and reserved for persons with disabilities but the
28 parking space has either been paved over or been allowed to fade beyond

1 recognition.

2 18. Defendants have no policy in place to make sure that parking space
3 reserved for persons with disabilities remain in the parking lot for use by
4 persons with disabilities.

5 19. Plaintiff personally encountered this barrier.

6 20. This inaccessible parking lot denied the plaintiff full and equal access
7 and caused him difficulty and frustration.

8 21. As a result of not being able to have beer at this place, plaintiff had to go
9 to elsewhere. Plaintiff was able to successfully have beer elsewhere.

10 22. Entrance into the Prime Pub is also one of the facilities, privileges, and
11 advantages offered by Defendants to patrons of the business.

12 23. On information and belief, plaintiff alleges that the rear doorway clear
13 passage width was less than 32 inches and inaccessible to wheelchair users.

14 24. Bar counters and tables are one of the facilities, privileges, and
15 advantages offered by Defendants to patrons of the Prime Pub.

16 25. Food or drink was served at a counter or bar for consumption by
17 customers either seated on stools or standing at the counter/bar but there was
18 no portion of the counter that was 34 inches in height or less and no accessible
19 tables in the same area.

20 26. Currently, food or drink is served at a counter or bar for consumption by
21 customers either seated on stools or standing at the counter/bar but there is no
22 portion of the counter that is 34 inches in height or less and no accessible tables
23 in the same area.

24 27. Restrooms are one of the facilities, privileges, and advantages offered
25 by Defendants to patrons of the Prime Pub.

26 28. The restroom doorway clear passage width was less than 32 inches and
27 inaccessible to wheelchair users. In fact, the restroom door width is 27.5
28 inches and the restroom stall door width is 23.5 inches.

1 29. The toilet stall was improperly configured and too small for wheelchair
2 users, measuring 43.5 inches in width and 58 inches in depth.

3 30. However, instead of providing two grab bars on adjacent or parallel
4 walls for use by persons with disabilities who need to transfer to the toilet,
5 there were no grab bars.

6 31. There was no clear floor space in front of the disposable toilet seat cover
7 dispenser because it was mounted on the wall behind the toilet.

8 32. The plumbing underneath the sink was not wrapped to protect against
9 burning contact.

10 33. Currently, the restroom doorway clear passage width is less than 32
11 inches and inaccessible to wheelchair users.

12 34. Currently, the toilet stall is improperly configured and too small for
13 wheelchair users, measuring 43.5 inches in width and 58 inches in depth.

14 35. Currently, instead of providing two grab bars on adjacent or parallel
15 walls for use by persons with disabilities who need to transfer to the toilet,
16 there are no grab bars.

17 36. Currently, there is no clear floor space in front of the disposable toilet
18 seat cover dispenser because it is mounted on the wall behind the toilet.

19 37. Currently, the plumbing underneath the sink is not wrapped to protect
20 against burning contact.

21 38. Plaintiff would like to return and patronize the Prime Pub but will be
22 deterred from visiting until the defendants cure the violations.

23 39. The violations identified above are easily removed without much
24 difficulty or expense. They are the types of barriers identified by the
25 Department of Justice as presumably readily achievable to remove and, in fact,
26 these barriers are readily achievable to remove. Moreover, there are numerous
27 alternative accommodations that could be made to provide a greater level of
28 access if complete removal were not achievable.

1 40. For example, there are numerous paint/stripe companies that will come
2 and stripe a parking stall and access aisle and install proper signage on rapid
3 notice, with very modest expense, sometimes as low as \$300 in fully
4 compliance with federal and state access standards.

5 41. Plaintiff is and has been deterred from returning and patronizing the
6 Prime Pub because of his knowledge of the illegal barriers that exist. Plaintiff
7 will, nonetheless, return to the business to assess ongoing compliance with the
8 ADA and will return to patronize the Prime Pub as a customer once the barriers
9 are removed.

10 42. Given the obvious and blatant violation, the plaintiff alleges, on
11 information and belief, that there are other violations and barriers on the site
12 that relate to his disability. Plaintiff will amend the Complaint to provide
13 proper notice regarding the scope of this lawsuit once he conducts a site
14 inspection. However, please be on notice that the plaintiff seeks to have all
15 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
16 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
17 he can sue to have all barriers that relate to her disability removed regardless
18 of whether he personally encountered them).

19 43. Additionally, on information and belief, the plaintiff alleges that the
20 failure to remove these barriers was intentional because: (1) these particular
21 barriers are intuitive and obvious; (2) the defendants exercised control and
22 dominion over the conditions at this location and, therefore, the lack of
23 accessible facilities was not an “accident” because, had the defendants
24 intended any other configuration, they had the means and ability to make the
25 change.

1 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
2 WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
3 defendants (42 U.S.C. section 12101, et seq.)

4 44. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 45. Under the ADA, it is an act of discrimination to fail to ensure that the
8 privileges, advantages, accommodations, facilities, goods and services of any
9 place of public accommodation is offered on a full and equal basis by anyone
10 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
11 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 12 a. A failure to make reasonable modifications in policies, practices,
13 or procedures, when such modifications are necessary to afford
14 goods, services, facilities, privileges, advantages, or
15 accommodations to individuals with disabilities, unless the
16 accommodation would work a fundamental alteration of those
17 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 18 b. A failure to remove architectural barriers where such removal is
19 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
20 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
21 Appendix "D."
- 22 c. A failure to make alterations in such a manner that, to the
23 maximum extent feasible, the altered portions of the facility are
24 readily accessible to and usable by individuals with disabilities,
25 including individuals who use wheelchairs or to ensure that, to the
26 maximum extent feasible, the path of travel to the altered area and
27 the bathrooms, telephones, and drinking fountains serving the
28 altered area, are readily accessible to and usable by individuals

1 with disabilities. 42 U.S.C. § 12183(a)(2).

2 46. Any business that provides parking spaces must provide a sufficient
3 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010
4 Standards § 208. The required minimum number of handicap parking spaces
5 is dependent on the total number of parking spaces available. *Id.* According to
6 the 1991 Standards, if a parking lot has 1-25 spaces, it must have at least 1
7 accessible parking space. 1991 Standards § 4.1.2(5)(a). And 1 in every 8 of
8 those accessible parking spaces, but not less than 1, must be a “van” accessible
9 parking space, *i.e.*, having an eight foot access aisle. 1991 Standards §
10 4.1.2(5)(b). Under the 2010 Standards, a parking lot with 1-25 spaces must
11 have at least 1 accessible space and 1 of them must be van accessible. 2010
12 Standards § 208.2 & § 208.2.4.

13 47. Here, the failure to provide accessible parking spaces is a violation of the
14 ADA.

15 48. Doorways must have a minimum clear opening of 32 inches with the
16 door open 90 degrees, measured between the face of the door and the opposite
17 stop. 1991 Standards § 4.13.5.

18 49. Here, the failure to provide the 32 inch wide doorway opening is a
19 violation of the ADA

20 50. Where food or drink is served at counters exceeding 34 inches in height
21 for consumption by customers seated on stools or standing at the counter, a
22 portion of the main counter which is 60 inches in length minimum shall be
23 provided that is no higher than 34 inches above the floor or service shall be
24 available at accessible tables within the same area. 1991 Standards § 5.2 and
25 4.32; 2010 Standards § 226.1. If seating is provided for persons in
26 wheelchairs at the counter or bar, there must be knee clearance for wheelchair
27 users measuring at least 27 inches high, 30 inches wide, and 19 inches deep.
28 1991 Standards § 4.32.3; 2010 Standards § 306.3 (the 2010 Standards

1 actually require a different depth).

2 51. Here the failure to provide an accessible counter/bar is a violation of the
3 law.

4 52. All doors to restrooms must have a minimum clear opening of 32 inches
5 with the door open 90 degrees, measured between the face of the door and the
6 opposite stop. 1991 Standards § 4.22.2; 4.13.5; 2010 Standards § 404.2.3.

7 53. Here, the failure to provide the 32 inch wide restroom doorway opening
8 is a violation of the ADA.

9 54. Where a toilet stall is provided in a restroom in existing facilities, the size
10 and arrangement of the standard toilet stall shall comply with either Fig. 30(a)
11 (standard stall) or Figure 30(b) (alternate stall). 1991 Standards § 4.17.3. A
12 standard stall must be at least 60 inches wide by 56 inches deep (if the toilet is
13 wall mounted) or 59 inches deep if the toilet is floor mounted. 1991 Standards
14 § Figure 30(a). An alternate stall must meet one of two configurations: either
15 (1) be exactly 36 inches by at least 66 inches deep (if the toilet is wall mounted)
16 or 69 inches (if the toilet is floor mounted) and provide front transfer grab bars
17 or (2) be at least 48 inches wide by at least by at least 66 inches deep (if the
18 toilet is wall mounted) or 69 inches (if the toilet is floor mounted) and provide
19 side transfer grab bars. 1991 Standards § Figure 30(b). Here, the toilet stall
20 does not meet any option under the ADA and is in violation of the law.

21 55. For a toilet to be considered accessible under the ADA, there must be
22 two grab bars on walls adjacent to the toilet to assist persons with disabilities
23 to transfer to the toilet. 1991 Standards § 4.16.4; 2010 Standards § 604.5.

24 56. Here, the failure to provide compliant grab bars is a violation.

25 57. Clear floor space that allows a forward or a parallel approach by a person
26 using a wheelchair shall be provided at controls, dispensers, receptacles, and
27 other operable equipment. 1991 Standards § 4.27.2; 2010 Standards § 309.2.

28 58. Here, the failure to provide such floor space is a violation of the law.

1 59. Hot water and drain pipes under lavatories must be insulated or
 2 otherwise configured to protect against contact. 1991 Standards § 4.19.4;
 3 2010 Standards §606.5.

4 60. Here, the failure to wrap the plumbing underneath the sink is a violation
 5 of the ADA.

6 61. A public accommodation must maintain in operable working condition
 7 those features of its facilities and equipment that are required to be readily
 8 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

9 62. Here, the failure to ensure that the accessible facilities were available
 10 and ready to be used by the plaintiff is a violation of the law.

11 63. Given its location and options, plaintiff will continue to desire to
 12 patronize the Prime Pub but he has been and will continue to be discriminated
 13 against due to the lack of accessible facilities and, therefore, seeks injunctive
 14 relief to remove the barriers.

15

**16 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
 17 RIGHTS ACT (On behalf of plaintiffs and against all defendants) (Cal Civ §
 18 51-53)**

19 64. Plaintiff repleads and incorporates by reference, as if fully set forth
 20 again herein, the allegations contained in all prior paragraphs of this
 21 complaint.

22 65. Because the defendants violated the plaintiffs' rights under the ADA,
 23 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
 24 Code § 51(f), 52(a).)

25 66. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 26 discomfort or embarrassment for the plaintiffs, the defendants are also each
 27 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 28 (c).)

1 **PRAAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 Plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act which damages provide for
9 actual damages and a statutory minimum of \$4,000.

10 3. Reasonable attorney fees, litigation expenses and costs of suit,
11 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

12

13 Dated: June 27, 2017

CENTER FOR DISABILITY ACCESS

14

15 By: 
16 Russell Handy, Esq.
17 Attorney for plaintiffs